

## ARTICLE 4

### SECTION 19

#### LONG-TERM CARE AND INCOMPETENT APPLICANTS

##### 1. GENERAL INFORMATION

This section provides the definitions of terms used for individuals who act on behalf of Long-Term Care (LTC) persons, and clarifies the required reporting responsibilities of Public Guardians, Conservators or Applicant/Beneficiary Representatives. It also establishes procedures for processing an application for Medi-Cal for Long-Term Care (LTC) and incompetent individuals. Instructions regarding who may file an application and complete the application process for LTC and incompetent applicants, methods used to determine an individual's incompetency, situations in which there is not an authorized representative (AR) to act in lieu of the incompetent applicant or the AR is non-cooperative, as well as situations where it appears that the LTC patient's income and/or property may be exploited by another person are provided in this section.

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##### 2. DEFINITION

###### **Authorized Representative:**

A person specifically designated in writing by the applicant/beneficiary to accompany, assist and represent the applicant/beneficiary in the Medi-Cal application/redetermination or fair hearing process. An authorized Representative cannot act on behalf of an incompetent individual.

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###### **Conservator:**

A person appointed by the court to act as the guardian, custodian or protector of another.

###### **Public Guardian:**

A county agency acting as a public entity appointed to act on behalf of persons who have lost their ability, either mentally or physically, to handle their own affairs. The **Public Guardian** acts as the individual's advocate. No private person is allowed to be a "public guardian."

###### **Representative (aka Key Person):**

A person acting on the behalf of another who is incapable of handling his/her own personal or business affairs. The representative must have specific and personal knowledge of the incompetent individual's circumstances. The **Representative** may be a friend, relative or someone else who has known the applicant/beneficiary and will act responsibly on his/her behalf.

When sending notices of action (NOAs) to an applicant/beneficiary who has a public guardian/conservator or representative (key person), a copy has to be sent to the public guardian/conservator or representative and a copy to the applicant/beneficiary. All other correspondence shall be sent to the public guardian/conservator or representative.

### 3. WHO MAY APPLY

Whether or not the LTC patient is incompetent, anyone who knows of an individual's need may apply for Medi-Cal on that individual's behalf by completing and filing the SAWS 1 initial application form, and if:

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- A. The individual is competent, he/she is responsible for providing all necessary information and verifications during the face-to-face interview and for completing all documents.
- B. The individual is incompetent, the Statement of Facts must be completed, in rank order, by the applicant's spouse, or, if the applicant has a conservator, guardian or executor, then the conservator, guardian or executor.

If there is no spouse, conservator, guardian or executor, then the worker shall evaluate the applicant's circumstances and determine whether or not there is a need for protective services.

If a need for protective services is not found, then the Statement of Facts may be completed and signed on the applicant's behalf by a relative, a person who has knowledge of the applicant's circumstances, or a representative of a public agency or the County department.

The phrase, "a person who has knowledge of the applicant's circumstances," may be interpreted in a broad sense. The office manager, administrator or social worker of a nursing facility MAY have sufficient information and knowledge of the applicant's circumstances if the applicant's income/property are known to them. Many nursing facilities maintain a trust account for their patients in which a patient's income is automatically deposited and funds are dispersed by the facility. In these instances, if no other family member is involved and protective services are not warranted, the facility staff person may file the SAWS 1 and complete the eligibility process in lieu of the patient.

### 4. ROLES AND RESPONSIBILITIES OF PUBLIC/PRIVATE CONSERVATORS

- A. A conservator has the management and control of the conservatee's estate, and is required to perform all the tasks that a Medi-Cal applicant/beneficiary would be required to perform.
- B. If the conservator is a government agency, its designees will be permitted to take on the functions of the conservator. No face-to-face interview is required for a public agency conservator.
- C. An individual who has obtained a court ordered conservatorship has the ability and responsibility to act fully for the conservatee but may not delegate another party to assume those duties (such as the Intake face-to-face interview, etc.). The private

Probation  
Code 2401 &  
SDHS Letter  
dated  
10/19/95.

conservator may, however, designate an Authorized Representative (AR) to assist him/her as any other competent applicant/beneficiary may do, and these ARs are only permitted to perform those functions stipulated on the MC 306, Appointment of Representative form.

- D. The private conservator is required to assume all activities necessary to determine eligibility whether he/she has an AR or not. If the worker believes that the AR is not acting in the best interest of the conservator or the conservatee, the worker will so advise the conservator and suggest that he/she revoke the MC 306 and appoint another AR if he/she so desires. The conservator is, however, ultimately responsible for the applicant/beneficiary and is subject to being removed as the conservator if he/she does not act responsibly. The worker should refer these situations to the Public Guardian's Office or the State Medi-Cal Fraud Bureau.

5. REPORTING RESPONSIBILITIES OF PUBLIC GUARDIAN/CONSERVATORS OR APPLICANT/BENEFICIARY REPRESENTATIVES

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It is very important that the public guardian/conservator or applicant/beneficiary representative be aware of his/her ongoing responsibilities of timely reporting changes to income, property, health coverage or any other changes that may affect eligibility of the applicant/beneficiary whom he/she represents. The following forms are required to be used to inform the public guardian/conservator or representative of these responsibilities:

**DHS 7068** (Responsibilities of Public Guardians/Conservators or Applicant/Beneficiary Representatives):

This form sets forth the responsibilities of those individuals to the incompetent applicant/beneficiary as court appointed or volunteer representatives, and is to be given or mailed to the public guardian, conservator or representative at the time of the initial application and at each redetermination, and is signed under penalty of perjury. This form is printed on NCR paper. The white copy (top sheet) is to be kept in the case file, the yellow copy is to be kept by the public guardian, conservator or representative. The signature, address and telephone number of the public guardian, conservator or representative is required on the form.

**MC 219** (Important Information for Persons Requesting Medi-Cal):

This form must accompany the DHS 7068. The MC 219 must be signed and dated by the public guardian, conservator or representative and kept in the case file.

6. METHODS TO DETERMINE A LTC PATIENT'S INCOMPETENCY

The worker may reach an incompetency decision by one of the following methods:

- A. Calling the LTC facility and inquiring as to the patient's ability to handle his/her own affairs;

- B. Obtaining a statement from the patient's physician;
- C. Making a "home visit" to the facility to communicate with the individual; or
- D. Obtaining satisfactory evidence from family members which would provide the worker with sufficient reason to believe that the LTC individual is incapable of handling his/her own affairs. Such evidence may include conservatorship documents or a written statement from a family member stating that the individual is unable to complete the application process.

#### 7. DILIGENT SEARCH

Ultimately, the worker may assume total control of a Medi-Cal case if:

- A. The applicant is unable to apply for or complete a Medi-Cal eligibility determination process due to incompetency, or being in a comatose condition or suffering from amnesia; and
- B. The applicant does not have a spouse, conservator, guardian or executor; or
- C. An applicant has a representative assuming case management responsibilities due to the applicant's mental condition, but the representative becomes non-cooperative or if contact is lost.

In these situations, the worker must refer the case to protective services to determine if the public guardian or adult protective services staff should become the responsible agent. If not, the worker must undertake a diligent search of known information to determine eligibility (refer to MPG Article 4, Section 9 for diligent search procedures). If the applicant is eligible, the worker will complete and sign the MC 210 Statement of Facts. Additionally, the MC 210 must be countersigned by another representative of the County Welfare Department (CWD) who shall also confirm, by personal contact, the inability of the applicant to act on his/her own behalf. (The case worker's supervisor may make a phone call to the facility to confirm the client's incompetency and countersign the MC 210.)

#### 8. NON-COOPERATION OF THE ACTING INDIVIDUAL

**LTC applicants should not be denied Medi-Cal due to the non-cooperation of the individual acting on their behalf.** In these cases, unless a suitable individual is located, the non-cooperative individual should be notified that the application is denied. The worker shall then proceed by filing a second SAWS 1 as well as an application for retroactive coverage if the second SAWS 1 is filed after the month in which the initial SAWS 1 was submitted. The worker should proceed with the diligent search procedures in order to make the appropriate eligibility determination.

9. LTC PATIENT'S INCOME AND/OR PROPERTY ARE EXPLOITED BY ANOTHER PERSON

In situations where it appears that the LTC patient's income and/or property may be or is being exploited by another person, the worker must:

- A. Notify the source agency where the income originates (Social Security Administration, Veterans' Administration, etc.). If the worker receives information that the income will temporarily cease until a representative payee is found, the worker should regard the income as unavailable and not count it toward a share of cost; or
- B. Refer the case to the public guardian, adult protective services (APS) or the LTC ombudsman if it appears that a bank account or other property may have been exploited. Once the referral has been made to the public guardian, APS or the LTC ombudsman and they have responded indicating that they are taking steps to recover the property, the worker should treat that property as unavailable until the property has been seized.

GENERAL QUESTIONS AND ANSWERS

Q.#1: When a nursing facility or other medical provider provides the CWD with a MC 1708 (Medical Report - Medical Assistance Only) to substantiate mental incompetency, may the CWD regard all resources such as bank accounts, etc. as unavailable?

A.#1: No. The availability of property must be determined separately from the incompetency issue. Even if the applicant is regarded as incompetent (this includes individuals in a comatose or unconscious state) and unable to handle his/her own affairs, if another individual (family member, friend, etc.) can get access to the property then it must be regarded as available. Many elderly persons have friends or relatives listed on bank accounts and this joint access situation should be determined. If the incompetent individual is the only person who has access, the account will be regarded as unavailable. Form MC 1708 will no longer be used by SDHS. There are other acceptable ways to verify incapacity and disability.

Q.#2: After a LTC applicant has been determined to be incompetent, does he/she have to complete and sign an Appointment of Representative (AR) form?

A.#2: No. A Medi-Cal applicant who is incompetent is presumably incapable of demonstrating the required knowledge and ability necessary to designate an authorized representative. An AR form would not be appropriate in these instances. No written authorization is required for an individual to assist an incompetent person to apply for benefits.

Q.#3: If an LTC patient is competent, does he/she have to complete and sign the AR form?

A.#3: Yes, if the applicant designates someone, other than a family member, to act on his/her behalf, the applicant must complete and sign an AR form. In this situation,

the applicant must be given the same rights and responsibilities under the law and Medi-Cal regulations to participate in the application process.

Q.#4: What would be the best course for the worker when it is found out that the representative (key person) has failed to report changes to the department?

A.#4: The worker shall request all information necessary to determine the applicant/beneficiary's eligibility/continuing eligibility and/or share of cost from the representative as the worker otherwise would do with any other clients. If the representative refuses or fails to provide the requested information by the due date, he/she shall be considered non-cooperative.